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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,828	06/18/2001	Pierre P. Repper	932-CAL	2484
26542	7590	01/29/2004	EXAMINER	
JAMES MARC LEAS 37 BUTLER DRIVE S. BURLINGTON, VT 05403			CLARKE, SARA SACHIE	
			ART UNIT	PAPER NUMBER

3749

DATE MAILED: 01/29/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/884,828

Applicant(s)

REPPER ET AL.

Examiner

Sara Clarke

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-85 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-10, 12, 25-57, 61, 62 and 64-85 is/are allowed.
- 6) ☒ Claim(s) 11, 13-18, 20-24, 58-60 and 63 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☒ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Priority***

It is noted that PCT application, which has been relied upon in the instant application for foreign priority rights, claimed benefit of U.S. provisional application. Since the instant application was filed more than 12 months after the prior provisional application, no benefit to the provisional application can be afforded.

Acknowledgment is made of applicant's claim for foreign priority based on the PCT application filed on October 18, 1999. It is noted, however, that applicant has not filed a certified copy of the PCT application as required by 35 U.S.C. 119(b).

### ***Specification***

Pages 26 and 27 of the specification appear to be arguments with respect to the PCT application. They should be deleted to prevent them from getting printed as part of any patent issuing from this application.

The use of the trademark "Mylar" has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11 and 23 contain the trademark/trade name "Mylar." Where a trademark

or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe "Myalr" and, accordingly, the identification/description is indefinite.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 58 is rejected under 35 U.S.C. 102(b) as being anticipated by Damrath et al. (US 5938425).

Damrath et al. discloses the invention as claimed including a first electronically controlled flow control mechanism 15 and a second electronically controlled flow control mechanism 25 of a different type. See Fig. 5. As disclosed at the top of column 10, when the two flow control mechanisms 15 and 25 are used together, they provide less gas than when the first is used alone while providing more than zero gas.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13, 15-17, and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franchi et al. (EP 800040) in view of Frasnetti et al. (EP 773409).

Franchi et al. discloses the invention substantially as claimed including an "on/off" sequencing mode of flow settings for the lowest portion of the burner heating levels. Franchi et al. does not disclose an igniter, a temperature sensor, and a visual interface including a display.

Frasnetti et al. discloses a valving system for a gas burner and teaches the use of an igniter 6,7 for the purpose of igniting the flame and a temperature sensor 5 for the purpose of indicating the presence of a flame. Frasnetti et al. also discloses a display 12,20 .

Thus, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to have provided the burner of Franchi et al. with the igniter and temperature sensor taught by Frasnetti et al. for the purpose of igniting and indicating the presence of a flame. The type of display used does not involve inventive step.

Claims 14 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franchi et al. (EP 800040) and Frasnetti et al. (EP 773409) as applied to claim 13 above, and further in view of Caldwell (US 6310611).

Franchi et al. and Frasnetti disclose the invention substantially as claimed with the exception of touch sensitive pads. Franchi et al. and Frasnetti teach the use of a plurality of control members for setting the thermal power. See the top of column 2.

Caldwell discloses the use of touch sensitive pads for use with a kitchen stove because they do not contain moving parts subject to breaking or wearing out. See column 1, lines 16-30.

Thus, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to provide the burner of Franchi et al. and Frasnetti with touch sensitive pads as taught by Caldwell because they do not contain moving parts subject to breaking or wearing out.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Franchi et al. (EP 800040) and Frasnetti et al. (EP 773409), as applied to claim 13 above, and further in view of Jenkins et al. (US 5987105).

Franchi et al. and Frasnetti disclose the invention substantially as claimed with the exception of the specific speakers claimed.

Jenkins et al. discloses a piezo speaker 5 for use with a stove (column 3, line 24) and teaches its use for providing an indication of a fault.

Thus, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to provide the burner of Franchi et al. and Frasnetti with a piezo speaker as taught by Jenkins et al. for the purpose of indicating the existence of a fault.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Franchi et al. (EP 800040) and Frasnetti et al. (EP 773409), as applied to claim 13 above, and further in view of Croucher et al. (US 5892201).

Franchi et al. and Frasnetti et al. disclose the invention substantially as claimed with the exception of a resistive hot-surface igniter.

Croucher et al. discloses a resistive hot-surface igniter, which can be used with stoves with a relatively low voltage.

Thus it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to provide the burner of Franchi et al. and Frasnetti et al. with type of igniter disclosed by Croucher et al. for the purpose of producing a flame with a relatively low voltage.

Claim 59 is rejected under 35 U.S.C. 103(a) as being unpatentable over Frasnetti et al. (EP 773409) in view of Meslif (US 5388984).

Frasnetti et al. discloses the invention substantially as claimed with the exception of a time based sequencer.

Meslif teaches the use of a time based sequencer (see Figs. 1-3) for the purpose of being able to modulate the flow rate for devices of reduced size such as a cooking plate.

Thus, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to have provided the heating of Frasnetti with the time based sequencer of Meslif for the purpose of being able to modulate the flow rate for devices of reduced size.

Claims 60 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frasnetti et al. (EP 773409) in view of Meslif (US 5388984) as applied to claims 13 and 59 above, and further in view of Akamatsu (US 5429111).

Frasnetti et al. and Meslif disclose the invention substantially as claimed with the

exception of a display and an in-line safety valve.

Akamatsu discloses a burner and teaches the use of a display 56 for informing an operator of the condition of thermal power.

Thus, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to provide the burner of Frasnetti et al. and Meslif with a display as taught by Akamatsu for the purpose of informing an operator of the condition of thermal power.

#### ***Allowable Subject Matter***

Claims 1-10, 12, 25-57, 61, 62, and 64-85 are allowable.

Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 11 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

#### ***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sara Clarke whose telephone number is (703) 308-1388. The examiner can normally be reached Thurs and Fri, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on (703) 308-1935. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.



Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.



Sara Clarke  
Primary Examiner  
Art Unit 3749

January 23, 2004